

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON**

**UNITED STATES OF AMERICA**

**v.**

**CRIMINAL NO. 2:18-cr-00134**

**ALLEN H. LOUGHRY II**

**FIFTH SUPPLEMENTAL RESPONSE OF THE UNITED STATES TO  
DEFENDANT'S STANDARD DISCOVERY REQUESTS**

Pursuant to Rule 16 of the Federal Rules of Criminal Procedure, Rule 16.1 of the Local Rules of Criminal Procedure, and the Arraignment Order and Standard Discovery Request entered by the Court in this case on August 23, 2018, the United States of America, by counsel, supplements its response to defendant's Standard Discovery Request as follows:

**Preliminary Response:** Pursuant to this Supplemental Response, the United States provides materials contained on a CD, containing the following folders:

1. Request A and B-Def Statements
2. Request E-Anticipated Trial Exhibits
3. Other Materials

The United States also forwarded materials to defense counsel prior to the filing of this response, as indicated below.

**Request A:** Disclose to defendant the substance of any relevant oral statement made by defendant, whether before or after arrest, in response to interrogation by a person the defendant knew was a government agent if the government intends to use the statement at trial. [Fed. R. Crim. P. 16(a)(1)(A)].

**Response:** See folder 1, which contains clips of an audio recording of defendant's Loughry interview on March 2, 2018. The entire audio recording was provided to defense counsel with the United States initial discovery response filed on July 6, 2018.

**Request E:** Permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, building or places, or copies or portions of any of those items, if the item is within the government's possession, custody or control, and

**(i) the item is material to preparing the defense; (ii) the government intends to use the item in its case-in-chief at trial; or (iii) the item was obtained from or belongs to defendant. [Fed. R. Crim. P. 16(a)(1)(E)]**

**Response:** See folder 2, which contains photos, copies of grand jury subpoenas, copies of press releases, an audio clip, video clips, media reports, a tax form, and a policy of American University related to travel. The United States will also introduce some or all of the slides prepared by the FBI's Cellular Analysis Survey Team, referred to in Response G below.

The audio clip is from a recording of a meeting involving defendant Loughry and others. The entire clip was previously produced with the United States initial discovery response.

Finally, the United States has recently learned of the existence of additional recordings by K. Ellis and the United States will provide copies of the recordings upon receipt.

**Request G: Give to the defendant a written summary of any testimony the government intends to use under Rules 702, 703 or 705 of the Federal Rules of Evidence during its case-in-chief at trial. If the government requests discovery under Federal Rules of Criminal Procedure 16(b)(1)(C)(ii) and the defendant complies, the government must, at the defendant's request, give to the defendant a written summary of testimony that the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial on the issue of the defendant's mental condition. The summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications. [Fed. R. Crim. P. 16(a)(1)(G)]**

**Response:** The United States provided a hard copy of a report of the FBI's Cellular Analysis Survey Team, Special Agent Kevin Horan, at the pretrial motions hearing. An electronic copy was sent via email that same day.

**Request H: Disclose to defendant all evidence favorable to defendant, including impeachment evidence, and allow defendant to inspect, copy or photograph such evidence.**

**Response:** The United States provided a memorandum of interview of Riley Barb to defense counsel, via email, on September 14, 2018.

**Other Materials:** See Folder entitled “Other Materials,” which contains a memorandum prepared by Sue Racer-Troy, a memorandum of interview of T. Gilmore, a listing of exits on I-79 prepared by Investigator James Powers, and a transcript of a meeting involving defendant Loughry on October 19, 2017. The United States reserves the right to make corrections to the transcript as necessary. The United States intends to use a portion of that transcript as a jury aid at trial.

**Request M: Provide notice to defendant of the government's intention to use evidence pursuant to Rule 12(b)(4)(B) of the Federal Rules of Criminal Procedure.**

**Response:** The United States reserves the right to use all information and evidence disclosed herein or made available for inspection and copying pursuant to this Response and such information and evidence which may be discovered and finally provided to defendant.

Any discovery provided that is not mandated by Court order, the Federal Rules of Criminal Procedure, federal statute or federal case law, is provided voluntarily as a matter of discretion solely to expedite and facilitate litigation of this case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

It is hereby certified that the foregoing “FIFTH SUPPLEMENTAL RESPONSE OF THE UNITED STATES TO DEFENDANT'S STANDARD DISCOVERY REQUESTS” has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing this 19th day of September, 2018, to:

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